Cyswllt Amgylchedd Cymru | Wales Environment Link

Water Resources (Control of Agricultural Pollution) Regulations Review

January 2025

Introduction

WEL members strongly support the continued implementation of the Water Resources (Control of Agricultural Pollution) Regulations 2021. We have been disappointed at the ongoing delays in fully implementing these regulations and this means that the review period has taken place at a time when not all of the provisions have been operating for a sufficiently long period of time for appropriate conclusions to be drawn.

WEL notes that some stakeholders believe that there is no evidence to justify a whole Wales regulatory approach. Various data are used to support this view, which we reject for the following reasons:

- Water Framework Directive monitoring is claimed to show that many catchments in Wales are unaffected by agricultural pollution and have a long-term trend of improvement. This is misleading. A complete assessment of the evidence, taking into account point source pollution incidents and diffuse pollution, and an assessment of the pollution risk in areas where livestock production is intensifying, supports the need for a whole Wales regulatory approach;
- Evidence from Glastir monitoring of headwater streams is not relevant to land use lower down the catchment. Many upland farmers do not have slurry systems, and the impacts of the intensification of livestock production are concentrated in the lowlands;
- NRW incident reports offer only a partial insight into agricultural pollution given that this data relates to recorded incidents and does not reflect unrecorded incidents and untraced diffuse pollution. Phosphorus pollution in Wales' Special Areas of Conservation (SAC) rivers continues to be a serious issue with more than 60% of SAC rivers failing phosphate targets.

- The effectiveness of the pre-2021 Nitrate Vulnerable Zones (NVZ) Action Programme in Wales is, we believe, a reflection of NRW's failure to enforce regulation and also points to the need for a more ambitious approach to Nitrogen loading at catchment level, as has been suggested in England;
- Changing climatic conditions are cited as a reason to move away from closed spreading periods. We do not support this view. Localised weather events create highly complex compliance requirements in a scenario where farmers are allowed the flexibility to undertake field operations appropriate to the growing, weather and ground conditions. A heavier burden of proof falls to the farmer, compared to the closed spreading period approach. And as referred to earlier, spreading within the closed period will more readily highlight to the regulator those farms with insufficient storage.

We are relieved that the power to review those regulations which came into force on 1st August 2024 will be limited as there will have been insufficient time for the effectiveness of the regulations to be monitored. This will apply to some of the changes under the Regulations, such as the closed period provisions under Regulation 18, and the increased storage requirements under Regulation 29.

We refer, in this briefing, to the presentation of Nicola Mills, southern area CoAPR inspection team leader at the 18th November meeting of the Wales Land Management Forum agricultural pollution subgroup (WLMF). The information presented by her came from the CoAPR compliance inspection report November 2023-June 2024 (CoAPR Compliance Report) prepared by NRW for submission to the Cabinet Secretary for Climate Change and Rural Affairs.

Success of the Regulations can be measured in three ways.

1. Is there compliance with the Regulations?
2. Is there a reduction in the number of point source pollution incidents which can have a devastating effect on river fauna?
3. Is there a reduction in the level of diffuse pollution? This is difficult to measure but long term diffuse pollution can cause loss of both the fauna and flora of a river. It requires a catchment approach to achieve a significant reduction. What is clear is that the issues are complex.

Concerns about the lack of effective regulation

We welcome that Welsh Government provided funding for 20 Natural Resources Wales (NRW) staff for two teams to carry out inspections of those farms defined as carrying out high risk activities based on herd and flock size. We must note that our members have found that herd/flock size does not necessarily indicate level of compliance and we are aware of examples of non-compliance in areas with small herd/flock sizes.

Whilst welcoming the establishment of the teams we still have concerns.
The regulatory culture adopted by NRW is crucial in achieving regulatory compliance and a reduction in the level of pollution. NRW is the sole body in Wales with the power to prosecute all environmental offences. Therefore, how they use their discretionary powers is crucial. On 22nd November 2023, the Chief Executive of NRW, Clare Pillman, appeared before the Commons Welsh Affairs Committee. In answer to questions posed by the Chair, Stephen Crabbe MP suggesting that NRW were reluctant to prosecute, Clare Pillman stated that prosecution is the point at which regulation fails. It was put to her that this statement showed that NRW were disincentivising prosecution.

In England and Wales, it has never been the case that every breach of law requires a prosecution, but to say that that a prosecution is a failure of regulation might well give an impression of a reluctance to prosecute. WEL disagrees with this assumption. Whilst ideally all agencies work with landowners to ensure compliance there are unfortunately individuals that wilfully pollute. In this case prosecution is the point of compliance. Also, prosecution needs to be a strong, impactful reality to enable compliance.

The regulator's attitude to compliance is also important. On 18th November 2024 Nicola Mills, head of the NRW southern CoAPR inspection team, gave a presentation before the Wales Land Management Forum, agricultural pollution subgroup. She stated that, between 1st November 2023 and 30th June 2024, 372 farms had been inspected by the two CoAPR inspection teams. Of those, 213 farms (57%) were non-compliant and 136 (37%) were compliant without intervention by NRW (the

remainder were compliant following intervention by NRW). She stated that the fact that 136 farms were compliant without the need for intervention was good. WEL members feel that a more appropriate comment would have been that the level of compliance was disappointing. We can think of no other regimes where such a low level of compliance is regarded as good. Such a comment, in the presence of representatives of the farming community, does not show a robust attitude towards non-compliance.

It is also worth noting that 93% of the 213 non-compliant farms were members of Quality Assurance schemes (e.g Red Tractor), showing how misleading such schemes are in suggesting that their members operate to high environmental standards.

To be effective, regulation must deter or prevent poor behaviour. There must be a perception by farmers that a regulatory inspection is likely, that the regulator will recognise and call out poor performance and is prepared to use all its regulatory and enforcement powers, including prosecution. We are not sure that NRW makes this clear and this is further confused by the fact that farmers experience NRW as a regulator, delivery agent and advisor at different times. We believe that NRW's attitude to compliance is, in part, a reflection of budget constraint. In evidence to the Climate Change Environment and Infrastructure Committee in September 2024 NRW's CEO Claire Pillman described the £2.5M funding from the Welsh Government as "the minimum that we felt was viable to deliver a service in this area."

The closed period for spreading (Regulation 18), the requirement for five months storage (Regulation 25) and regulatory policy

On 1st August 2024, those parts of CoAPR dealing with the requirement for increased slurry storage, five months for cattle slurry, and a closed period for spreading, 15th October to 15th January for most farms in Wales, came into force. On 15th October 2024, the Cabinet Secretary for Climate Change and Rural Affairs, Huw Irranca Davies MS, published a statement setting out the regulatory response agreed with NRW for the policing of the closed periods for the spreading of organic manure with high readily available nitrogen. The closed periods are set out in regulation 18 of CoAPR.

It is disappointing that 42 months after the announcement of CoAPR, there are many farms which are noncompliant with the five-month storage requirement. This

reduces their ability to comply with the closed period provisions. Spreading of manures in inappropriate conditions poses a serious pollution risk. However, we do recognise that for some farms compliance in the short term might not be possible. For these farms there should be agreed timelines for when compliance will be achieved.

Lack of storage is a problem that has been developing for many years, but is now being highlighted more strongly by the new closed period. Compliance with the 4-month storage requirement under Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991/2010 (SSaFO) is poor, with farms having increased herd size without increasing storage capacity. Unless the farm caused a serious pollution incident or was inspected, it was unlikely that a shortfall in storage would be detected. This will have been leading to pollution incidents as well as posing pollution risks on many farms. Spreading within the closed period will highlight some of those farms with insufficient storage to the regulator. The appointment of the NRW CoAPR inspection teams, together with the closed period, will allow much better regulation of storage requirements.

Notwithstanding our concerns about a regulatory attitude that we perceive as less robust than it might be, the closed period, coupled with dedicated teams to regulate CoAPR, could drive better compliance with the five months storage requirement. WEL welcomes the ability for having five months storage for a three-month closed period as this will give flexibility in the event of poor conditions.

Also relevant to compliance in this area is the fact that Nutrient Management Plans are not routinely checked or confirmed. Some farms are meeting the NMP requirements by buying other farms for spreading and including them in the plan. However, checks that spreading is happening as per the plan are not happening, to our knowledge.

Enhanced Nutrient Management Approach (ENMA) Schedule 1A CoAPR

When CoAPR was announced by the then Cabinet Secretary, Lesley Griffiths, in January 2021 the farming unions expressed concern that the holding limit for the spreading of nitrogen from grazing livestock manures was 170kg of nitrogen/hectare/annum, with no derogation. On 31st December 2023 Schedule 1A

of the amended Regulations came into force which allowed for a derogation to 250 kg of nitrogen/hectare/annum from grazing livestock manures for the period up to 31st December 2024 subject to notification to NRW by 31st March 2024. This is the Enhanced Nutrient Management Approach. No indication has been given by Welsh Government of an intention to extend the derogation. Under the ENMA the farmer giving notice to NRW must also provide an enhanced nutrient management plan which, in addition to nitrogen, must contain a phosphorus index for the land on which it is proposed to spread and a plan for the spreading of phosphorus. Any animal manure spread must be produced by the farm on which it is proposed to be spread. WEL is unclear about the level of compliance with these requirements.

One of the criticisms by WEL of the Regulations in their original form was the specific reference to nitrogen, with phosphorus testing not required. We welcome the extension of testing and planning requirements to phosphorus in the ENMA and would repeat the previous concern regarding the lack of specific mention of phosphorus in the original, non-ENMA, application of the Regulations. We are aware that WG lacks evidence on soil phosphorus levels in Wales. Evidence of high levels of phosphorus was found in the Wye catchment in work by the Lancaster University RePHoKUs project. A requirement for phosphorus testing under CoAPR would provide the soil analyses necessary to better regulate manure application in Wales. The requirement for testing under ENMA will not provide the evidence because update of this option was so low.

NRW have recorded 9 notifications under the ENMA for 2024. It would be easy to simply say that with such a low notification rate the derogation is not required, and a blanket limit of 170kg of nitrogen/hectare/annum should be applied. At the WLMF agricultural pollution subgroup meeting on 18th November 2024, meeting participants discussed concerns that farmers were still spreading in excess of the 170 kg limit. Equally our members have spoken to a successful dairy farmer who was concerned that farmers would be reluctant to declare soil results for phosphorus as results would show excessive phosphorus levels. This concern could be seen as unsupported were it not for the findings of the RePHoKUs on the Wye catchment. Where there has been testing, the levels of phosphorus are often excessive and NRW has established that SAC rivers in Wales are failing for phosphorus, with apportionment modelling showing that agriculture is a significant contributor. We

would argue that if a derogation to 250 kg is required the industry must show good faith and provide evidence in support of the need for a derogation. Nutrient data and farm data should be transparent, and we believe it should be a requirement of public funding.

Regulation 6 and Regulation 12 CoAPR Crop need and evidence of bad practice

The issues over the ENMA lead us to the issues of crop need and the provision of a nitrogen management plan under Regulation 6 and when to spread under Regulation 12. We pair these issues in light of two pieces of evidence:

- the CoAPR Compliance Report, which gives the absence of a nitrogen management plan or inaccurate NMP as one of the reasons for failure at inspection;
- evidence given by two agricultural contractors before the WLMF in October 2019.

To understand the evidence given in the October meeting you need to read the minutes of both the October and November meetings. There were important omissions from the October meeting that were added in the minutes of the November 2019 meeting. The two sets of minutes must be read together. The evidence of the contractors taken from the November minutes was summarised as follows.

1. Many farmers were not testing their slurry and were using it as a waste product.
2. Some farmers were spreading slurry in the period immediately before heavy rain with a view to it washing off (this is in contravention of CoAP Reg 12). In support of this, the contractors described refusing a contract to spread in anticipation of heavy rain only for another contractor to do the work. The contractor presenting to the group examined a nearby stream after the application to find it heavily contaminated with slurry.
3. Some farmers were not prepared to adapt to a changing climate.
4. Some fields were being repeatedly spread with slurry. Contractors would say they were spreading on a whole farm basis when they were spreading on one field. This was due to there being insufficient storage or insufficient land upon which to spread.

5. They were of the opinion that regulation was required to create a level playing field for all farmers and contractors.

The scenarios at 1, 2 and 4 above show applications where there is no demonstrable benefit to the soil or crop growth or applications exceeding the requirements of the crop. In these situations, the slurry applied should be classified by NRW as waste materials, and subject to waste control legislation.

The requirement for a properly drafted nutrient management plan and the establishment of crop need are important requirements that all landowners should be complying with.

Exemption from the storage requirements for silage and slurry Regulation 26

Part 6 of CoAPR deals with the storage of organic manure and silage. Regulations 23, 24 and 25 deal with the making of silage and the storage of silage and slurry. An exemption from these regulations is set out in Regulation 26 for slurry and silage stores in use before the 1st March 1991 or constructed before 1st March 1991 but where use started after 1st March 1991. This exemption was originally included in the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991 (SSaFO). We were surprised that this exemption was retained in the CoAPR.

Those stores are now at least 33 years old. In many cases that is beyond their intended working life. It is incongruous that those stores most likely to fail because of age are the subject of an exemption.

One example of this was the collapse of a slurry store at Glan Peris Farm, Ceredigion where two farmers were ordered to pay fines and costs totalling approximately £15,000 by Aberystwyth magistrates' court on 14th December 2021. In this case a 40-year-old store collapsed resulting in a large fish kill and the closure of a local beach. The slurry store had received no maintenance or assessment.

Another example was on the Clettwr, a Teifi tributary. In February 2022 a slurry store built in the 1970's collapsed. It had received no formal maintenance for over 10 years

other than visual inspection. 75,000 gallons of slurry polluted 12 km of the river resulting in a fish kill. Both of these cases were prosecuted by NRW.

NRW will have evidence of other collapsed store cases. It concerns us that the existence of exempt stores is often revealed only when they fail. It remains unclear if NRW knows how many exempt stores there are, their location and what risk they pose? Such stores should not have the benefit of an exemption and should be subject to regular inspection. The ambition for the legislation should be to prevent polluting incidents.

Regulation 46 Offences and penalties

The role of contractors

Regulation 46 (3) establishes that where a body corporate is guilty of an offence then any director, manager, secretary or similar person of the body corporate or any person purporting to act in such a capacity, that person, as well as the body corporate, is guilty of the offence. This is an important expression of liability and makes the position clear to both the regulator and company managers. It prevents managers hiding behind a corporate veil.

A lot of high-risk activity is often carried out by contractors. Under Regulation 46(1) any person who contravenes any provision of the Regulations may be guilty of an offence. Whilst the regulator primarily seeks to establish liability for breaches of the Regulations to those who manage farm businesses, we see no reason why agricultural contractors themselves cannot be criminally liable for breaches of the regulations. Contractors should have detailed knowledge of the Regulations. An acceptance that both the farm business and the contractor might be criminally liable would be an added safeguard.

We referred above to agricultural contractors giving a presentation to WLMF. They also supported the idea of licensing for contractors and a ‘three strikes and out principle’ to be applied to contractors as a way of ensuring regulatory compliance. WEL would strongly support contractor licensing.

Evidence of bad agricultural practice around fodder growing

There are concerns around the growing of fodder crops, in particular, fodder beet and maize. The issues involve bare soil during the winter period leading to loss of soil, nutrients, herbicide and pesticide to the environment. The problems surrounding beet are inherent, based on winter browsing of a crop which provides little ground cover. The issues around maize are made worse by failure to follow the guidance provided by chapter 4 of the Code of Good Agricultural Practice (CoGAP). Maize is considered a high-risk crop and has specific guidance set out in CoGAP. Early maturing strains should be planted, and they should be harvested as soon as possible. Maize should be grown on flat ground and should either be undersown or a cover crop planted as soon as possible after harvesting. The growing of maize as fodder is a feature of intensive dairy production in southwest Wales and elsewhere. The reality is that maize is often not harvested until the end of October. It is rarely undersown and is often grown on a slope. Where a cover crop is planted, it is rye grass, which is not planted until early November and has little time to establish itself before late autumn and winter rains commence and is therefore ineffective. These practices lead to soil erosion and loss of soil to water together with nutrients, residual pesticide and herbicide. This also increases flood risk.

To evidence this, WEL has provided two short video films taken on behalf of Afonydd Cymru (attached with this paper) on 20th November 2024. The first shows an extensive area of land used for growing maize. There is no cover crop, there is little if any buffer strip next to the river, and the ground is saturated. The second clip shows what at ground level looks like an effective cover crop. The aerial footage shows how little cover is provided by the late planted cover crop which has yet to establish properly.

Guidance on soil husbandry is contained in chapter 4 of CoGAP. The original draft of the Sustainable Farming Scheme (SFS) had the planting of a multi species cover crop as a universal action. It is now proposed as a possible optional action, following pushback from the agriculture sector. However, the timeline, budget and detail of these options are not clear.

It is unknown if intensive dairy will choose to join the SFS. Compliance with Chapter 4 of CoGAP is poor leading to soil loss with related loss of nutrient, pesticide and

herbicide. Guidance and a voluntary approach are not working to protect soils and keep soil, pesticides and herbicides out of our waterways.[1] CoAPR effectively brought chapter 5 of CoGAP into regulation. WEL would therefore propose that a similar approach be applied to chapter 4.

EPR and licensing for intensive livestock

WEL believes there would be significant benefits in including intensive livestock farming[2] (dairy and beef) in Environmental permitting Regulations (EPR).

EPR meets all the requirements of the Regulators Code, and offers a wide range of benefits over the existing CoAP Regulations:

Environmental

- Risk based regulation, allowing effort to be focused on the biggest polluters/ potential polluters (individually and by aggregation), while providing the data to identify changes in risk factors to guide changes in response.
- Outcome focused approaches: it is primarily based on the standards to be achieved, rather than the techniques to be adopted.
- Accountability: a permit holder is responsible for all activities on their site (farm) this would include contractors.
- Scalable, but more transparent, enforcement sanctions: these can range from compliance advice at one end of the scale, to prosecution, with the ultimate sanction withdrawal or suspension of a permit (on a preventative basis).
- Innovation and efficiency: as with other industries, standards are based on what can be achieved through Best Available Technology, which is subject to regular (5 yearly) review and subsequent upgrading.
- Transparency: sites are listed on the Public Register, together with their permits and the results of NRW inspections. The Public Register will provide a spatial picture of the number and size of farms and show the public who the

[1] https://www.gov.wales/sites/default/files/publications/2021-04/soil-loss-water-report.pdf
[2] Intensive livestock farms are agricultural holdings that concentrate large groups of livestock together indoors, or on small plots, in high densities for the whole or vast majority of the year to maximise profits and productivity through economies of scale. Intensive livestock farms rely on substantial harmful artificial inputs and compromise animal welfare.

good (and not so good) performers are. It will enable the performance of intensive livestock to be directly compared with other sectors within EPR.
- Better data: data on emissions can be entered onto the Emissions Inventory, ensuring it is taken into account in critical loads calculations and "in combination" effect calculations under Habitats Regulation Assessments.

Financial

- Full cost recovery by the regulator: the financial burden of regulation and compliance checking would be shifted from the taxpayer to the polluter – honouring the polluter pays principle.
- Reduced charges for those with a proven good performance record.
- Scope for tiered charges from a minimal registration fee through charging bands for larger operations.

Administrative

- Intensive Pig and Poultry units already operate under EPR, so the approach is not new to the agricultural sector, and will be familiar to many advisors.
- EPR is an "off the shelf regulatory framework" the regulations are regularly amended and extended to accommodate new regimes, so legislative effort would be minimized.
- NRW already administers EPR, and has systems in place for permitting and inspections, and is familiar with its capabilities.

It is anomalous that a sector as polluting as intensive livestock is not included in EPR. Other sectors (such as small rural sewage works, combined sewer overflows (CSOs) and waste activities) which have a similar (or lesser) impact, are covered by these regulations, as are intensive pig and poultry installations. The current threshold for intensive poultry units to require a permit is 40 000 chickens, in terms of ammonia emissions, this is equivalent to 80 cattle housed indoors, yet the latter do not require a permit.

There is still no effective requirement to prevent the cumulative effect of multiple livestock units. For example, due to the proliferation of intensive chicken poultry units on catchments such as the Wye and the Severn this has resulted in significant pollution of these internationally important SAC rivers.

Bringing intensive livestock farming into EPR regulation is not a new idea:

- 2019 National AQ strategy for England stated “We (UK Government) will extend environmental permitting to the dairy and intensive beef sectors”.
- In the updated 2023 AQ strategy, it said “The government will consult on bringing dairy and intensive beef farms within scope of environmental permitting”.
- Confusingly the 2023 Environmental Improvement Plan stated “The government was considering expanding environmental permitting conditions to dairy and intensive beef farms.”

Nothing has been published in respect of any action taken in response to these commitments and, while the previous Westminster Government appears to have delayed actioning this, Defra and WG officials have worked on this proposal, and undoubtedly have done much of the legwork to make it happen if given permission. It may, in any case, be required to maintain access to EU markets[3].

We believe that the time has now come for the proposal to be resurrected and brought forward as a serious initiative to control both the impacts on water quality and emissions to air caused by these sectors, with new and extended EPR regulations put in place. It is an effective policy solution for a resilient, just transition to nature-friendly farming, facilitating nature recovery, climate mitigation, animal welfare advances, improved public health and a fairer deal for farmers.

Given the water quality problems caused by the proliferation of poultry units in catchments such as the Wye and Severn in Wales, we believe it is also timely to reduce the threshold at which they fall within EPR.

COP 15

[3] The European Commission has undertaken to assess, by 31 December 2026, whether there is a need to further address, by way of inclusion within the Industrial Emissions Directive, the emissions from rearing livestock, including from cattle, and a reciprocity clause to ensure producers outside the EU meet requirements similar to EU rules when exporting to the EU. The IED is implemented in England and Wales by the EPR.

In 2022, COP 15 established 23 targets under the Global Biodiversity Framework. Target 7 is to reduce pollution risks and impacts by 2030. One of the elements is to reduce the amount of excess nutrients lost to the environment by at least 50%. The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 should reflect the ambition of this target and can work towards Welsh Government complying with its international commitments.

Conclusion

The coming into force of the Regulations has been phased to allow the agricultural industry to adapt to a new regulatory framework. The industry's level of compliance is poor, which is extremely disappointing. The industry's level of engagement with the ENMA has been limited and farming unions are seeking weakening of the regulations. The inclusion of this review in the Regulations will allow the appropriateness and effectiveness of the Regulations to be assessed. We appreciate the difficulty that phased implementation presents to you. We have passed the introduction of the closed period for spreading. We will not know the effect of the closed period until it is complete and NRW have had time to report on compliance. Assessment of the consequences of the closed period will, in any event, be incomplete due to noncompliance with the Regulations. Until there is compliance with the Regulations it will be difficult to assess their effectiveness.

A voluntary approach to nutrient management in the 35 years since the increased use of slurry systems, has seen an increase in point-source pollution and a reduction in water quality. The Regulations are intended to eliminate bad practice by ensuring infrastructure is adequate and that manures are appropriately managed. Although we are encouraged by the appointment of the two CoAPR teams this is still not enough. The closed period for spreading may present difficulties in a changing climate but gives the regulator an opportunity to determine how many farms pose a risk of pollution due to non-compliance. Merely increasing the storage requirement without effective regulation will achieve little.

Wales still needs to go further to address diffuse pollution from farms which we believe is the most widespread cause of river pollution in Wales. Therefore, stronger regulation is needed along with the ability of NRW to enforce such regulation. If not, WEL is concerned that we will continue to see little improvement in the quality of

waterways across Wales and ongoing deterioration of our water environment will continue.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales. WEL is a respected intermediary body connecting the government and the environmental NGO sector. Our vision is a thriving Welsh environment for future generations.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.

Swyddfa Caerdydd
Tramshed Tech
Uned D, Stryd Pendyris Caerdydd CF11 6BH
F: 07498 228066 | E: enquiry@waleslink.org
Trydar: @WalesLink

Cardiff Office
Tramshed Tech
Unit D, Pendyris Street, Cardiff CF11 6BH
T: 07498 228066 | E: enquiry@waleslink.org
Twitter: @WalesLink

www.waleslink.org

Cadeirydd | Chair: Roger Thomas || Cyfarwyddwr | Director: Karen Whitfield
Rhif Elusen Gofrestredig | Registered Charity Number: 1022675